IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION (CRIMINAL) NO.2654 OF 2004

IN

MISC.APPLICATION NO.245 OF 2004

IN

NDPS SPECIAL CASE NO.84 OF 2004

Shri Girish Raghunath Mehta ...Petitioner

Versus

The Inspector of Customs (P)

Narcotic Cell, Mumbai & Anr. ...Respondents

.....

Mr.S.R.Mishra for Petitioner.

Ms.S.J.Patwardhan i/b Mr.D.N.Salvi for Respondent No.1.

Mr.A.S.Gadkari, A.P.P. for Respondent No.2.

.....

CORAM: A.M.KHANWILKAR, J.

APRIL 6, 2005.

P.C.

1. Heard Counsel for the parties.

2. The limited issue that arises for

consideration in this Petition is: whether the prosecution can be directed to preserve the contraband item (poppy straw) till the disposal of the trial. The lower Court has answered that issue against the Petitioner relying on provisions of Section 52A of the N.D.P.S. Act. To that extent, no fault can be found with the conclusion reached by the lower Court.

3. To get over this position, it was contended on behalf of the Petitioner that the subject article be allowed to be stored in the godown of the Petitioner and which can be kept in custody of the prosecution, by not only putting seal to the said godown, but by employing their own security. If this option was to be accepted, that results in directing the prosecution to preserve the contraband item, which cannot be done by Section 52A of the N.D.P.S. Act. On the other hand, I find substance in the suggestion given on behalf of the prosecution that contraband item seized from the Petitioner can be disposed of to some licensed dealer at fair market price and in the event, the Petitioner succeeds in the trial, it

will be open to him to ask for such relief, as may be advised for recovery of the said amount along with damages, if any, if permissible by law.

4. Accordingly, this Petition is disposed of with observation that the prosecution may proceed to dispose of the subject poppy straw, without prejudice to the rights and contentions of the Petitioner for recovering sale proceeds thereof along with the damages, if any, if permissible by law.

A.M.KHANWILKAR, J.